app159-07

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No. 159 OF 2007
IN
Notice of Motion No. 1327 of 1998
in
Execution application No. 303 of 1997
in
Recovery Certificate No. 960 of 1994.

Shri Ashit S. Bhansali ... ... Appellant
vs.
The Kapol Cooperative Bank Ltd. & ors. ... Respondents

Mr. Nitin Thakker, Sr. Advocate i/b. M.M.Patel & Co., for appellant
Mr. A. Y. Sakhare, Sr. Advocate i/b. K. M.Sangani for respondent no.1.

CORAM: R.M.S. KHANDEPARKAR
AND
D. G. KARNIK JJ.

DATE: April , 4, 2007

P.C.:

1. Leave to amend the cause title by deleting respondent nos. 2 to 6. Amendment to be carried out forthwith.

2. Heard. Admit.

3. Mr. K. M.Sangani Advocate for respondent, waives service. Heard forthwith by consent.

4. The appellant challenges the order dated 28th February 2007

passed in Notice of Motion No. 1327 of 1998 in Execution application No. 303 of 1997 in Recovery Certificate No. 960 of 1994.

5. Though the impugned order is sought to be challenged on various grounds it is not necessary to consider all of them, suffice it to refer to only one ground of lack of jurisdiction of the civil court in relation to the execution of a recovery certificate issued under section 101 of the Maharashtra Cooperative Societies Act, 1960. In fact this point is no more res integra and has been settled by the unreported judgment of the Division Bench of this court in **M/s. Satguru Construction Co. Pvt. Ltd. & ors. vs. Greater Bombay Cooperative Bank Ltd., in** appeal no. 136 of 2007 in Notice of Motion No. 1567 of 2005 in Execution application No. 471 of 2004 in Recovery Certificate application No. A.R. / DEP/101/648/1997 dated February 26, 2007 to which one of us has been party (R.M.S. Khandeparkar J.) read with the decision in **Vithal Yadav Mhase vs. Amdar Balasaheb Thorat Nagari Sahakari Path Sanstha Maryadit through its Administrator,** reported in **2002(4) Bom.C.R. 408**, which

was delivered by one of us (R.M. S. Khandeparkar J.). The issue sought to be raised in the matter is fully covered by the said decision, which is not in dispute. The impugned order cannot be sustained as no execution proceedings in relation to the recovery certificate can be initiated in the Civil Court. On the said ground itself the impugned order is required to be set aside.

6. The appeal is therefore allowed, with no order as to costs. Needless to say that all the observations made in this order shall not come in the way of the concerned authorities from taking appropriate proceedings initiated by the authorities under the Act. The bonds furnished by the appellant stands cancelled and discharged.

7. Notice of motion no. 1327 of 1998 stands disposed of in view of the the disposal of the appeal.

(R.M.S. KHANDEPARKAR J.)

(D. G. KARNIK J.)